This conflict of authority appears to turn on the nature of marshaling. Marshaling is an equitable procedure to apply assets in accordance with the rights of the parties under the circumstances presented to the court, whether in the payment of creditors from a decedent's estate or in the satisfaction of claimants from overlapping securities. It is part of the broad question, what property can be reached to satisfy an obligation, and is therefore a matter of remedy, to be determined by the law of the forum at the time of the suit.[5] This reasoning accords with the English view. In the one American case, however, which squarely raised the point in this form, a majority of the court held that it was a matter of right, to be governed by the law at the time of B's mortgage.[6] Granting the correctness of the English theory, it does not follow, however, that the general result under the prevalent American view is wrong. The conflict should be regarded as a difference not of legal principle but of fact, namely, whether under the circumstances it is fairer that C should exonerate B or that they should contribute ratably, and on this courts may well differ. Where part of property subject to three mortgages was taken for a railroad and, pending the suit for compensation, which was to be subject to the mortgages, the third mortgagee was cut out of the remaining land by a foreclosure of the second mortgage, it was recently held, approving the English cases, that the first mortgage could not be marshaled against the land in the hands of the purchaser at the foreclosure sale, but should be paid ratably from the land and the compensation money. *Bates* v. *Boston Elev. R. Co.*, 72 N. E. Rep. 1017 (Mass.). These facts neatly avoid the general conflict so that no other decision would be justified. For, the moment the third mortgagee is in a position to seek marshaling against the land, the purchaser at foreclosure is on hand seeking similar relief against the compensation money. The situation would be the same if simultaneous mortgages were made of Blackacre and Whiteacre to B and C respectively. Neither deserves a preference.

SPECIFIC PERFORMANCE FOR INSOLVENCY. — Inadequacy of legal remedy is the basis of equity jurisdiction. The reason, therefore, that contracts regarding chattels are seldom enforced in equity is not that they constitute a subject-matter over which equity will not take jurisdiction, but that, generally, the legal remedy of damages is adequate. Accordingly, where a chattel has a unique value, equity will grant relief as readily as in case of land.[1] Likewise, upon the ground of inadequacy of redress at law, equitable interference may be demanded by the peculiar circumstances of a transaction.[2] When a vendee has paid the purchase price for specific goods, for instance, and the vendor has become insolvent, the great weight of authority grants the vendee specific performance, contrary to a recent decision in Florida.[3] *Hendry* v. *Whidden*, 37 So. Rep. 571. Ordinarily, a sale of goods even with advance payment, raises no equity upon which specific performance can be predicated, for money damages afford ample remedy. But when the

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5 *Cf.* Mineral Point R. R. Co. *v.* Barron, 83 Ill. 365.
6 Bank of Orangeburg *v.* Kohn, 52 S. C. 120.

1 See Ames, Cas. Eq. Jur. 40, *n.*
2 Parker *v.* Garrison, 61 Ill. 250.
3 Parker *v.* Garrison, *supra;* McNamara *v.* Home Land Co., 105 Fed. Rep. 202; Draper *v.* Stone, 71 Me. 178 (*semble*); Clark *v.* Flint, 22 Pick. (Mass.) 231. *Contra*, McLaughlin *v.* Piatti, 27 Cal. 451.

added factor of insolvency intervenes, the aid of equity is necessary to prevent the vendee from losing both the goods and his money. Equity, therefore, makes the vendor a constructive trustee of the chattels. It interferes in this case upon the same principle that it applies in granting an injunction, upon proof of the insolvency of the promisor, to prevent the breach of a contract not to compete, although liquidated damages were contemplated as the sole relief.[4]

The most plausible argument that has been urged against specific performance of a contract of sale during the defendant's insolvency is its violation of the spirit of our bankruptcy legislation, in that it creates a preference. This contention seems untenable. If the relief is denied, the general creditors gain the undue advantage of sharing in both the purchase price and the goods at the expense of the vendee. The situation is analogous to that in cases of stoppage *in transitu*, where the seller, after parting with title and expressly giving credit, is allowed to reclaim the goods on the broad equitable principle that "the goods of one man should not be applied in payment of another man's debts."[5] The result in Holroyd *v.* Marshall[6] would be equally obnoxious to such an interpretation of the policy against preferences. It is true that a mortgage of after-acquired property differs from a contract of sale, in that it operates as a contract to give a security. Because it is specifically enforceable regardless of insolvency, it creates an equity in the goods at the moment of acquisition. But it is equally true that this equitable remedy usually becomes important only where it works to the disadvantage of other creditors of the equitable mortgagor. This supposed objection is, moreover, applicable to cases where a consciously insolvent bank receives deposits. But equity holds that so long as the deposit is traceable in the increased assets of the bank, it is subject to a constructive trust.[7] In short, equity interferes in cases of insolvency not to give the plaintiff a preference but to deny the general creditors an undeserved enrichment at his expense. And the bankruptcy courts have recognized the justice of this position.[8] A similar result might be reached when there is only part payment of the purchase price with subsequent insolvency. The vendor should not be allowed to retain both the money and the goods. He should be made mortgagee of the goods, holding them as security for the unpaid purchase price, and, upon payment, the vendee should be entitled to specific performance.

INDIVIDUAL LIABILITY OF STOCKHOLDERS AS AFFECTED BY TRANSFER OF STOCK. — Until the beginning of the nineteenth century, the corporation was regarded as holding the corporate property in trust for the stockholders;[1] and they, as *cestuis que trustent*, were bound in equity to exonerate the corporation for any excess of corporate debts over corporate

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[4] See Zimmerman *v.* Gerzog, 13 N. Y. App. Div. 210.

[5] D'Aquila *v.* Lambert, 1 Amb. 399. In England, at least, this right extends even to stoppage of the proceeds of the sale to a sub-vendee while the goods are in transit. *Ex parte* Golding, 13 Ch. D. 628. But see Kemp *v.* Falk, 7 App. Cas. 573, 577.

[6] 10 H. L. Cas. 191.

[7] See Ames, Cas. Trusts, 12, *n.*; Williston, Cas. Bankruptcy, 420, *n.* 1.

[8] See Scammon *v.* Bowen, 1 Hask. (U. S. C. C.) 496; Hamilton *v.* Nat'l Bank, 3 Dill. (U. S. C. C.) 230.

[1] Hildyard *v.* South Sea Co., 2 P. Wms. 76; Drybutter *v.* Bartholomew, 2 P. Wms. 127; Sandys *v.* Sibthorpe, 2 Dick. 545. It was not until 1836, in Bligh *v.* Brent, 2 Y. & C. 268, that the modern view was adopted. See 2 HARV. L. REV. 151.